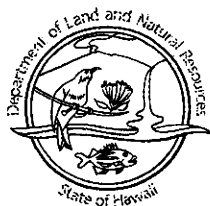


LINDA LINGLE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

HISTORIC PRESERVATION DIVISION
KAKUHIHEWA BUILDING, ROOM 555
601 KAMOKILA BOULEVARD
KAPOLEI, HAWAII 96707

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ENGINEERING

FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS
WATER RESOURCE MANAGEMENT

AGENDA

MOLOKA'I ISLAND BURIAL COUNCIL MEETING

DATE: WEDNESDAY, AUGUST 20, 2003
TIME: 10:30AM - 12:30PM
PLACE: QUEEN LILIUOKALANI CHILDREN'S CENTER
LILIUOKALANI TRUST
MOLOKA'I OFFICE, MAUNALOA HIGHWAY
KALAMAULA, MOLOKA'I

I. OPENING REMARKS

II. MINUTES

- APPROVAL OF JUNE 18, 2003 MEETING MINUTES

III. BUSINESS

A. WEST END SUBDIVISION PROJECT

Information/Recommendation: Status Update and Review of Archaeological Studies to Date.

B. MAPULEHU

Information/Recommendation: Status update.

C. KALAUPAPA AIRPORT SANITATION DISPOSAL PROJECT

Information/Recommendation: Section 166 consultation.

IV. CASE UPDATES

Information / Recommendation: Status updates.

V. ANNOUNCEMENTS

VI. ADJOURNMENT

Pursuant to §92-3, HRS, all interested persons shall be afforded an opportunity to **present oral testimony** or submit data, views, or arguments, in writing on any agenda item. **A request to be placed** on a burial council meeting agenda must be made with the Burial Sites Program staff at **least two weeks** preceding the scheduled meeting date. In addition, the request **must be accompanied** by all related documentation. Failure to comply with this procedure **will delay your item** to the following month's agenda.

Materials related to items on the agenda are available for review at the State Historic Preservation Division at 555 Kakuhihewa Building, 601 Kamehaha Boulevard, Kapolei, Hawai'i 96707, and will also be available at the meeting. Disabled persons needing special assistance should contact our office in advance at (Kaua'i) 271-2111, (Oahu) 974-4000, (Hawai'i) 974-4000, (Moloka'i & Lana'i) 1-800-GOV-INHI, or 581-1111.

To view the agenda online, go to <http://www.chmwr.com> at least 10 days prior to the scheduled meeting.



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MINUTES

MOLOKA'I ISLAND BURIAL COUNCIL MEETING

DATE: WEDNESDAY, AUGUST 20, 2003
TIME: 10:30AM
PLACE: QUEEN LILI'UOKALANI CHILDREN'S
CENTER LILI'UOKALANI TRUST,
MAUNALOA HIGHWAY
KALAMAULA, MOLOKA'I

ATTENDANCE:

MEMBERS:

Lawrence Aki, Chair
Roxanne French, Vice-Chair
Robert Alcain
Wayde Lee
Lance "Kip" Dunbar
Pearl Hodgins

STAFF:

Kai Markell, Burial Sites Program Director
Mary Carney Perzinski, Burials Facilitator
Sara Collins, Moloka'i Island Archaeologist
James Paige, Deputy Attorney General

GUESTS:

Harold Edwards
Halealoha Ayau
Halona Kaopuiki

ABSENT:

Nanette Napoleon (unexcused)
Louella Opu'ulani Albino (excused)
Pilipo Solatario (excused)

I. OPENING REMARKS

Chairman Lawrence Aki (Aki) calls meeting to order at 11:55 A.M. A pule is offered by Councilmember Wayde Lee (Lee).

II. APPROVAL OF JUNE 18, 2003 MEETING MINUTES

A motion is made to approve the June 18, 2003 Moloka'i Island Burial Council meeting minutes. (French/Dunbar)

VOTE: ALL IN FAVOR.

III. BUSINESS

A. WEST END SUBDIVISION PROJECT

Information/Recommendation: Status Update and Review of Archaeological Studies to Date.

Harold Edwards (Edwards), of Moloka'i Ranch, says that at the last meeting he attended, two issues came up: 1) to revise the map to more clearly show the sites that are slated for preservation and color code the burial and possible burial sites, and 2) how to inform would be buyers of the significance of the sites, what types of features to be aware of on their property, and historic preservation laws. Edwards disperses a draft copy of a brochure entitled *We want to share with you some important information regarding Ancient Sites at La'au Point, La'au Point Subdivision Located on the Island of Molokai, Hawaii*. Edwards asks the Council members for feedback.

Lawrence Aki (Aki) says that as Hawaiians, we have concerns about the archaeological features, but the focus of discussion should be on the burials.

Halona Kaopuiki (Kaopuiki) of Native Hawaiian Historic Preservation Council, says he worked on the archaeological inventory survey project with Bishop Museum in 1989. 200 additional sites were recorded during archaeological sweeps. Kaopuiki says he and other families have ancestors buried down at La'au Point. The settlement at Kapukuwahine was left for the descendents to take care of, to remind today's people of the past.

Halealoha Ayau (Ayau) of Hui Malama I Na Kipu O Hawaii Nei, asks if Moloka'i Ranch has made an effort to identify any lineal descendents.

Edwards says they have not done that yet.

Ayau asks if there is any plan to identify descendents.

Edwards says that because the plan is to preserve in place all burials and all possible

burial sites, no action has been undertaken to identify descendents. Edwards was just informed that he needs to place an advertisement for the formal process of locating descendents.

Ayau says that the sooner descendents are located the better because then they can be consulted with as soon as any burials are found. That way, there is less pressure to make an immediate decision. Ayau asks if any burials were exposed during the inventory survey.

Sara Collins (Collins), Moloka'i Island Archaeologist, says she doesn't recall any burials being exposed, but one finger bone was found. The burials were identified by the physical structures on the surface of the site and are referred to as burials and/or possible burials. No excavations were done to verify the presence or absence of remains. No excavations are proposed for the burial sites or the possible burial sites.

Ayau asks if midden samples were taken.

Collins says yes and she believes that is where the human phalanx was from. The survey report was accepted in 1994. The human finger bone was possibly left on Moloka'i or returned to Moloka'i, which would have been during Ayau's era of Burial Sites Program Director.

Ayau says this is the first he has heard about this. Ayau asks if the bone was identified in the field or the lab.

Collins says she doesn't believe the bone was taken from the island.

Kaopuiki says that the finger bone was taken because they thought it was animal bone.

Aki says he appreciates Ayau's line of questioning, but requests that the questions go through the Council.

Edwards says that the color coded subdivision plans that the Council is looking at was submitted to the County in January 2002. The County did not accept the plan, and the plan shows more development than will actually occur. The plan is being reevaluated.

Aki asks Ayau to continue.

Ayau says he wants to know the status of human remains found during the inventory survey from Pa'au Point. There is some confusion over what happened to the bone. If remains were taken, they need to be returned, but hopefully the bone has already been reburied.

Councilmember Pearl Hodgins (Hodgins) arrives at 12:20 PM.

Councilmember Lance "Kip" Dunbar (Dunbar) says that the plat map is still a draft.

Dunbar asks if it would be possible to create a density that makes it economically feasible to not impact the sites at all.

Edwards says that deed restrictions will be put on the properties that will not allow any impact to the sites. The market for the mauka areas doesn't have as much value as the makai areas. Each lot with archaeological features is approximately two acres which allows the homeowner ample room to build a house without impacting the features. The scale of the features on the map is distorted. The features aren't as large as they appear on the map.

Dunbar says that it is not just the impact on the buyer, it is the impact on the community knowing that lots are purchased by people with archaeological features, including burials, on it. It would create less problems for Molokai Ranch and the community if you were able to create the subdivision around the archaeological features entirely. A person coming from Minnesota and owning a parcel with a burial site could cause problems which are avoidable now.

Edwards says it is something Molokai Ranch will have to take a look at.

Dunbar says that some of the features are on the edge of the lot and if the line is redrawn, then those features couldn't be owned by the lot owner or impacted at all.

Kaopuiki asks about the artifacts that are scattered on the ground that were left in place. There are likely more burials in the cliffs and in house sites that haven't been identified yet. There is a piko stone at La'au Point. Kaopuiki says that some of the sites have given him nightmares.

Roxanne French (French) says she is trying to understand the Burial Council's position. There is nothing they can do about the subdivision permit. The concern of the Burial Council is what happens if burials are discovered and how to protect known burials. There is no mention in the burial treatment plan for an archaeological monitor during construction.

Edwards says that it is difficult to make that statement because it would obligate them to have an archaeologist on site every time equipment is running. The issue is to recognize the sensitive and the potentially sensitive areas.

French says she is concerned about the shift of the land since the archaeological inventory survey was done in 1989, which may have exposed some of the burials.

Collins says she went out in October 2002 and was not able to access the whole property due to recent heavy rains. Collins took GPS readings at less than 10 sites. The points taken were accurate in relation to Boyd Dixon's recordation of the site locations discussed in the 1994 report. Collins offers to provide the Council the archaeological monitoring plan section.

Kai Markell (Markell) says that this is early in the process and no decisions are to be made today. When the permit applications come through to the SHPD for review, Burial Sites Program will recommend the burial treatment plan process of identifying descendents. The descendents shall be consulted and their mana`o will be included in the burial treatment plan. The Council will be presented with the formal burial treatment plan in the future.

Kaopuiki mentions the old springs that are kapu on the property. Kaopuiki says that there is landscape trenching occurring south of Papohaku Beach, at Po`aiai where there is at least one burial that he observed in 1992.

Markell says it has now been reported to the Department and he will follow up on it.

Paige says that this item could be added to today's agenda, but it has been reported to the Department and now the Department can follow up on it and it could be placed on next month's agenda.

Aki suggests that Collins, Markell and Kaopuiki determine the burial location on the map provided by Edwards. Aki suggests having the property owner at the next meeting.

A motion is made to put this burial item at Po`aiai on the next agenda.
(Lee/French)

VOTE: ALL IN FAVOR.

French reminds the Council that if property owners are invited to the meeting, the Council members need to be present and on time as well.

Ayau recommends that the Department find out the status of the human phalange that was identified during the inventory survey.

A motion is made for the Department to follow up with Boyd Dixon to find out the status of the phalange that was recovered during the inventory survey. (Lee/Alcain)

VOTE: ALL IN FAVOR.

Aki says he would recommend a letter be sent to Molokai Ranch, Mr. Harold Edwards, to take Mr. Dunbar's suggestion to have the lots that have burials or possible burials, that these lots be removed from the development plan.

Collins says that Molokai Ranch or buyers will be required to hire archaeologists to monitor ground disturbing activities during development. The state archaeologist will provide oversight and will come over as needed.

Aki recommends that an archaeologist and cultural consultant be hired by the development to monitor the development plan from beginning to end.

French says she would like to see the archaeological requirements for the burial treatment plan before endorsing this recommendation.

Collins says she has not reviewed the burial treatment plan, but the archaeological monitoring plan does require an archaeologist be present during ground disturbance.

A motion is made to have the lots with burial sites or possible burial sites be excluded from development plans and that an archaeologist and cultural consultant monitor the excavations during development.
(Dunbar/no second)

Motion dies.

Edwards suggests taking this additional information discussed at today's meeting and work with the Department with locating descendents.

Lee explains that he did not endorse Dunbar's motion because he would like a more accurate updated map of the development plans.

A motion is made to have an archaeologist and cultural monitor be present during all ground disturbing activities during the La'au Point development. (Alcain/Dunbar)

VOTE: ALL IN FAVOR.

Lee says he would like to make sure that the Council will have the opportunity to comment before the development permits are approved by the County.

Edwards says that the County is requiring a letter from the SHPD saying that the Historic Preservation requirements have been met before the County will approve any permits. Edwards says that his next step is to advertise for descendents and start the burial treatment plan process by bringing them into the consultation process. Edwards says he wants to look into excluding lots with burial sites. Once some of these issues are resolved, Edwards will request to be on the agenda to give the Council an update.

Dunbar says that if the lots with burials are excluded from sale and the County is also restricting lot sizes, the development may not go through.

B. MAPULEHU

Information/Recommendation: Status update.

Markell says that the land is still owned by Nene O Molokai. The issue of the iwi at

Alapai's house is foremost and needs to be resolved.

Lee says that Arleone Young wants to work this out. There is to be a land sale to the County in 4-6 weeks (October). According to Lee, Young believes she would be breaking the law if she allowed Lee in to rebury the iwi. Young wants a letter from the SHPD administrator to direct the reinterment.

Markell says that the letter will be drafted to Arleone Young. These were inadvertent discoveries and the mitigation plan is to rebury the remains as soon as possible.

Lee requests to hand deliver the letter to Arleone Young and to cc the Council.

Collins says that if the land is purchased by the County, then the HUD funds used to purchase the land will trigger Section 106 and an environmental assessment and more review by the SHPD.

Hodgins says that there is a block grant from CDBG and they are awaiting an environmental assessment approval.

Lee requests that a faxed copy of the letter be sent to him and he'll deliver it to Young directly; the original letter will be sent to Arleone Young.

Aki says that a burial preserve has already been created and the iwi will be reburied there.

C. KALAUPAPA AIRPORT SANITATION DISPOSAL PROJECT

Information/Recommendation: Section 106 consultation.

Mary Carney Perzinski (Perzinski) says that the representatives for this item could not arrange a flight in time and have requested to be placed on the next agenda.

IV. CASE UPDATES

Information / Recommendation: Status updates.

Ayau says that a notice was published in the Federal Register regarding remains to be released from the Bishop Museum to Molokai through OHA, Hui Malama and the Molokai Burial Council.

French says she only knows about this item because of OHA, but not as a burial council member.

Ayau says that the Museum should have been in contact with the Burial Council, but the Council may want to contact Bishop Museum.

Aki asks that the Museum be contacted regarding the repatriation of remains to Molokai and to request that the Molokai Island Burial Council be kept in the loop.

V. ANNOUNCEMENTS

Ayau says that Senator Lorraine Inouye has been trying to organize a burial summit for all of the Burial Councils to identify issues and concerns of the process and whether legislative action should be pursued.

Markell says the best way would be to have all the island burial council chairs attend a meeting and outline the topics to be discussed at the larger burial council meeting.

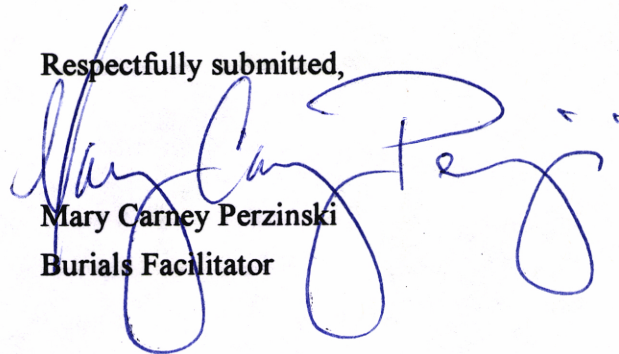
Lee asks if Sandwich Isles Communication (SIC) will be back on the agenda.

Aki says that SIC should be contacted to give an update to the Burial Council.

VI. ADJOURNMENT

Meeting is adjourned at 1:36 PM.

Respectfully submitted,



Mary Carney Perzinski
Burials Facilitator



DEC 31 2003

LINDA LINGLE
GOVERNOR

JAMES R. AIONA, JR.
LIEUTENANT GOVERNOR

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December 30, 2003

LESLIE H. KONDO
DIRECTOR

Mr. Alika Silva

Ms. Ninia Parks Elsey

Re: Oahu Island Burial Council

Dear Mr. Silva and Ms. Elsey:

This is in response to your letter to Governor Lingle dated September 20, 2003, and an earlier undated letter, both pertaining to the Department of Land and Natural Resources State Historic Preservation Division ("SHPD") Oahu Island Burial Council ("Burial Council"). Governor Lingle requested that the Office of Information Practices ("OIP") review the Sunshine Law violations alleged in your initial letter to her. Questions outside of the OIP's jurisdiction were referred by Governor Lingle to the appropriate agencies for follow up.

ISSUES PRESENTED

I. Whether the Burial Council's executive meeting convened pursuant to section 92-5(a)(4), Hawaii Revised Statutes ("HRS"), was improper because no attorney was present.

II. Whether you should have been allowed to testify at the March 12, 2003 meeting.

OIP Op. Ltr. No. 03-22